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## FISCAL IMPACT REPORT

SPONSOR HCPAC ORIGINAL DATE 1/24/19  
LAST UPDATED 3/12/19 HB 51/HCPACS/aSJC  
SHORT TITLE Decriminalize Abortion SB \_\_\_\_\_  
ANALYST Chilton/Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates 2017 House Bill 473

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC; to the 2017 duplicate of this bill, House Bill 473)

Children, Youth and Families Department (CYFD)

Department of Health (DOH)

### SUMMARY

#### Synopsis of SJC Amendments

The Senate Judiciary Committee Amendments to the House Consumer and Public Affairs Committee Substitute for House Bill 51 removes Section 30-5-2 NMSA 1978, which provides that neither hospitals nor persons are to be required to participate in any abortion procedure if against their moral or religious beliefs, from the group of statutes being repealed.

#### Synopsis of Original Bill

The House Consumer and Public Affairs Committee Substitute for House Bill 51 would eliminate language in state statute (Sections 30-5-1 through 30-5-3 NMSA 1978) that makes performing an abortion a criminal act.

The sections to be removed state the following:

1. Section 30-5-1: Defines terms, including “justified medical termination” (in cases of rape or incest, continuing the pregnancy will result in death or grave mental health

impairment of the mother, severe mental or physical defects in the fetus) and “special hospital board.”

2. Section 30-5-2: Neither hospitals nor persons are to be required to participate in any abortion procedure if against their moral or religious beliefs.

3. Section 30-5-3: Defines criminal abortion as causing the termination of pregnancy when a pregnancy is terminated when it is not a “justified medical termination.” Prescribes penalties for abortion providers.

The committee substitute removes the words “that decriminalize abortion” from the end of the long title of the bill, as those words apply only to Section 30-5-3.

## **FISCAL IMPLICATIONS**

As no prosecutions for performing abortion in New Mexico in properly prepared and permitted facilities have been initiated in the years since the Supreme Court decision in *Roe v. Wade* in 1973, there would be no fiscal impact of passing this legislation.

## **SIGNIFICANT ISSUES**

DOH comments on the consequences of restriction of abortions elsewhere:

The current statute stipulates that if an abortion is performed that does not meet the exemptions, it is considered a fourth-degree felony and if the woman dies it is a second-degree felony. Data indicate an association between unsafe abortions and restrictive abortion laws. The median rate of unsafe abortions in the 82 countries with the most restrictive abortion laws is 23/1000 women compared to 2/1000 in nations that allow abortions. Unsafe abortions are one of the leading causes of maternal mortality annually, accounting for approximately 68,000 or 13% of all maternal mortality deaths worldwide (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/>). Repealing restrictive abortion laws can reduce the risk of unsafe abortions and therefore reduce the risk of maternal mortality.

The bill would at first glance appear to decriminalize all forms of abortion, whether provided in a medical facility or not and by a physician or layman and whether performed in sterile or unsanitary conditions. However, it is clear that the statutes that cover the “practice of medicine” (defined in Section 61-6- NMSA 1978) and criminalize all practice of medicine by those not licensed to do so (Section 61-6-20 NMSA 1978) would avoid this sort of “back-yard abortion” practice.

As pointed out by NMAG, the bill leaves intact Section 30-5A, the Partial Birth Abortion Ban, which defines and criminalizes that (very rarely performed) form of abortion.

AOC pointed out with regard to the identical bill, 2017 House Bill 473, that 47 states and the District of Columbia have enacted “conscience clauses,” allowing medical facilities and individuals to refuse to perform or take part in abortions. Although House Bill 473 would remove that clause from New Mexico law (Section 30-5-2), federal law, according to AOC, would continue to allow such refusal on the part of institutions and of individuals: “Congress enacted the Church Amendment, 42 U.S.C. § 300a-7, which provides that health care entities receiving certain federal funds may ‘refuse to provide abortion or sterilization if such services

are contrary to their religious or moral beliefs.””

According to the CDC ([https://www.cdc.gov/reproductivehealth/data\\_stats/abortion.htm](https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm)),

In 2015, 638,169 legal induced abortions were reported to CDC from 49 reporting areas. The abortion rate for 2015 was 11.8 abortions per 1,000 women aged 15–44 years, and the abortion ratio was 188 abortions per 1,000 live births.

Compared with 2014, the total number, rate, and ratio of reported abortions for 2015 decreased 2%. Additionally, from 2006 to 2015, the number, rate, and ratio of reported abortions decreased 24%, 26%, and 19%, respectively. In 2015, all three measures reached their lowest level for the entire period of analysis (2006—2015).

Women in their twenties accounted for the majority of abortions in 2015 and throughout the period of analysis. The majority of abortions in 2015 took place early in gestation: 91.1% of abortions were performed at  $\leq 13$  weeks' gestation; a smaller number of abortions (7.6%) were performed at 14–20 weeks' gestation, and even fewer (1.3%) were performed at  $\geq 21$  weeks' gestation. In 2015, 24.6% of all abortions were early medical abortions (a non-surgical abortion at  $\leq 8$  weeks' gestation). The percentage of abortions reported as early medical abortions increased 114% from 2006 to 2015, with an 8% increase from 2014 to 2015. Source: [Abortion Surveillance — United States, 2015. MMWR Surveill Summ 2018; 67\(No. SS-13\)](#).

According to the CDC's surveillance summary referenced above, New Mexico's 2015 rate of abortion, 8.8 per thousand women of 15 to 44 years of age, was well below the national rate of 11.8/1000.

### **OTHER SUBSTANTIAL ISSUES:**

According to NMAG, “The repeal of the present Sections 30-5-1 to -3 is consistent with Federal law. The statute that House Bill 51 proposes to repeal (Sections 30-5-1 to -3) is likely unconstitutional on its face. See *State v. Strance*, 1973-NMCA-024, 84 N.M. 670. In *Strance*, the Court of Appeals in 1973 declared portions of the statute defining various terms to be unconstitutional. *Id.* ¶¶ 6-10. Judge Sutin partially dissented from the majority opinion, expressing that “[t]he [e]ntire [s]tatute is [u]nconstitutional.” *Id.* ¶ 13. Thus, an argument could be made that House Bill 51 does nothing but remove an archaic, and arguably invalid, statute for which our appellate court has already disapproved.”

DOH also notes “There may be a legal justification for this bill. The existing statute may be constitutionally challenged under existing case law. HB51 is substantially similar to HB16 (2018) and HB473 (2017).”

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If there were a successful attempt to overturn *Roe v. Wade* and this bill were not enacted, prosecutions of medical providers for performing abortions could again take place in New Mexico. There would be no change in the ability to prosecute providers of so-called “backyard abortions” by unlicensed practitioners.